

Timothy W. Snider, OSB No. 034577  
timothy.snider@stoel.com  
Stephen H. Galloway, OSB No. 093602  
stephen.galloway@stoel.com  
STOEL RIVES LLP  
760 SW Ninth Avenue, Suite 3000  
Portland, OR 97205  
Telephone: 503.224.3380  
Facsimile: 503.220.2480

Attorneys for Defendant

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

TRUEMAN DIETER, individually and on  
behalf of other customers,

Case No.:

Plaintiffs,

**DEFENDANT'S NOTICE OF  
REMOVAL**

v.

WALGREEN CO.,

Defendant.

---

Pursuant to 28 U.S.C. §§ 1332(a), (d), 1441, 1446 and 1453, defendant Walgreen Co. (“Defendant”) files this Notice of Removal to remove this putative class action, and all claims and causes of action therein, from the Circuit Court for the State of Oregon for Multnomah County, as follows:

1. On June 2, 2020, plaintiff Trueman Dieter (“Plaintiff”) commenced the action entitled *Dieter v. Walgreen Co.*, Case No. 20CV19546, in the Circuit Court for the State of

Oregon for Multnomah County. A true and correct copy of Plaintiff's original putative class action complaint (the "Original Complaint") is attached hereto as part of Exhibit A.

2. On March 5, 2021, Plaintiff filed in the Circuit Court for the State of Oregon for Multnomah County an amended complaint titled Complaint for Damages (the "Amended Complaint"), adding a prayer for statutory damages. A true and correct copy of the Amended Complaint is attached hereto as part of Exhibit A.

3. In the Amended Complaint, Plaintiff alleges that Defendant violated the Oregon Unlawful Trade Practices Act ("UTPA"), ORS 646.608(1)(j) & (s) by misrepresenting the amount of a price reduction on 5-pack Swisher Sweets cigarillos. (Am. Compl. ¶¶ 4-5.) Plaintiff seeks "\$200 statutory damages, attorney fees and costs under ORS 646.638, and an injunction under ORS 646.636." (*Id.* ¶ 5.)

4. Pursuant to 28 U.S.C. § 1446(b)(3), this notice of removal is being filed within thirty days of receipt by Defendant of a copy of the Amended Complaint, which is the pleading "from which it may first be ascertained that the case is one which is or has become removable." This notice of removal is thus timely filed in accordance with 28 U.S.C. §§ 1446(b) and 1453(b).

5. Defendant bases this notice of removal upon 28 U.S.C. § 1441(a), which permits defendants to remove any state court civil action over which the district courts of the United States have original jurisdiction.

6. This Court has original jurisdiction over the Amended Complaint pursuant to 28 U.S.C. § 1332(d)(2), because the matter in controversy is a putative class action in which a member of the putative class of plaintiffs is a citizen of a State different from the Defendant; the amount in controversy exceeds \$5 million, exclusive of interest and costs; and the number of putative class members is 100 or more.

7. This action is a putative class action as defined in Federal Rule of Civil Procedure 23 and Oregon Rule of Civil Procedure 32. The Amended Complaint describes the action as a “class action on behalf of hundreds or thousands of other Oregon Walgreen customers.” (Am. Compl. ¶ 1.)

8. Diversity jurisdiction as defined in 28 U.S.C. § 1332(d) exists among the putative class of plaintiffs and the Defendant. Defendant is a corporation organized under the laws of Illinois, with its principal place of business located in Deerfield, Illinois. Accordingly, Defendant is not a citizen of the State in which the action was originally filed (Oregon). The putative class comprises 100 or more putative class members based on Plaintiff’s allegation that the action was brought on behalf of hundreds or thousands of other Oregon Walgreen customers.” (Am. Compl. ¶ 1.)

9. The matter in controversy exceeds \$5 million, exclusive of interest and costs. Plaintiffs seek statutory damages of \$200 per violation and attorneys’ fees pursuant to ORS 646.638. (Am. Compl. ¶ 5.) Based on the “thousands” of putative class members and the attorneys’ fees that would be incurred during the course of the litigation, the amount at issue exceeds \$5 million. *See Fritsch v. Swift Transportation Co. of Arizona, LLC*, 899 F.3d 785, 794 (9th Cir. 2018) (amount in controversy includes future attorneys’ fees).

10. This Court also has original jurisdiction over the Amended Complaint pursuant to 28 U.S.C. § 1332(a), which applies where (1) the action is between “citizens of different States,” and (2) the amount in controversy exceeds \$75,000.

11. First, there is complete diversity between the named Plaintiff and the Defendant as defined in 28 U.S.C. § 1332(a)(1). Defendant is a corporation organized under the laws of

Illinois, with its principal place of business located in Illinois. Upon information and belief, the named Plaintiff is a citizen of Oregon.

12. Second, the amount in controversy is in excess of \$75,000 based on the attorney's fees sought by the named Plaintiff under ORS 646.638. Based on Plaintiff's allegation that the putative class may consist of "thousands" of consumers, the Court may conclude that attorneys' fees will exceed \$75,000.

13. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of all process, pleadings and orders served upon Defendant in this case are attached hereto as Exhibit A.

14. Pursuant to 28 U.S.C. § 1446(d), Plaintiff will be provided with written notice of the filing of this notice of removal.

15. Pursuant to 28 U.S.C. § 1446(d), a copy of this notice of removal will be filed with the Clerk of the Circuit Court for the State of Oregon for Multnomah County.

WHEREFORE, Defendant Walgreen Co. removes this action from the Circuit Court for the State of Oregon for Multnomah County to this Court.

DATED: March 15, 2021.

STOEL RIVES LLP

/s/ Stephen H. Galloway  
TIMOTHY W. SNIDER, OSB No. 034577  
timothy.snider@stoel.com  
STEPHEN H. GALLOWAY, OSB No.  
093602  
stephen.galloway@stoel.com  
Telephone: 503.224.3380

Attorneys for Defendant

IN THE CIRCUIT COURT FOR THE STATE OF OREGON  
FOR MULTNOMAH COUNTY

**TRUEMAN DIETER**  
individually and on  
behalf of other customers

Case No. [REDACTED]

**COMPLAINT FOR  
EQUITABLE RELIEF**

Unlawful Trade Practices

Not Subject to Mandatory Arbitration

Filing Fee Authority: ORS 21.135

## THE PARTIES

Plaintiff files this class action on behalf of hundreds or thousands of other Oregon Walgreen customers who were subject to false advertising of certain Swisher Sweets 5-pack tobacco products. Walgreen is a national retail chain with 76 stores in Oregon and over \$100 billion in annual revenue. As alleged in this complaint, Walgreen violated Oregon law by misleading consumers about the offering price and cost of certain Swisher Sweets tobacco products falsely represented as “5 for the price of 3”. Walgreen also violated Oregon law by making false and misleading representations of fact concerning the reason for, and alleged existence of the “5 for the price of 3” price reduction.

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2                   **2.**

3                   Individual units of the Swisher Sweets tobacco product at issue can be  
4 purchased for 99 cents throughout Oregon. Walgreen's "5 for the price of 3" tobacco  
5 advertisement representation was false and misleading because Walgreen charged  
6 plaintiff and the putative class members between \$3.99 and \$4.99 for 5-packs that  
7 should have cost no more than \$2.97 as advertised, including at locations where  
8 Walgreen did not even charge a price for individual units. Walgreen knew and  
9 understood that the "price of 3" should have been no more than \$2.97, but Walgreen  
10 charged customers \$3.99 to \$4.99, a substantially greater amount.

13                   **3.**

14                   Walgreen's violation of the UTPA was willful and reckless because Walgreen  
15 was in control of and was aware of its pricing schemes. Walgreen knew that  
16 individual units of the 5-packs of tobacco products at issue were sold at a cost of 99  
17 cents throughout Oregon, or were otherwise unavailable at Walgreen. Walgreen  
18 received notice that its 5-pack tobacco advertisements potentially violated Oregon  
19 law and Walgreen continued to promote the advertisement anyway. Walgreen was  
20 intimately familiar with the UTPA because it had been actively defending a separate  
21 UTPA advertising class action in Oregon at the time of its violations in this case.  
22 Walgreen knew customers would have received a better value had they purchased  
23 the tobacco products at issue in smaller quantities. Walgreen misrepresented the  
24 cost and alleged price reduction of its 5-packs in hopes of increasing sales and profits.  
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2                  **4.**

3 Plaintiff is an individual consumer residing in Portland, Oregon. Plaintiff paid  
4 \$3.99 for a tobacco product 5-pack represented as “5 for the price of 3” from Walgreen  
5 in Portland, Oregon in or around May 2020. Individual units of Swisher Sweets were  
6 available for purchase for 99 cents each at a nearby location, and individual units  
7 were not even for sale at the Walgreen location. Walgreen’s false representation that  
8 the 5-pack was being offered at a reduced price of “5 for the price of 3” prior to  
9 purchase caused plaintiff an ascertainable loss of the difference between the price  
10 Walgreen charged plaintiff for the 5-pack and the price as advertised. Plaintiff also  
11 relied on Walgreen’s representation that the 5-pack was being offered at a reduced  
12 price of “5 for the price of 3” prior to purchase, causing ascertainable loss in the  
13 purchase price of the product because plaintiff would not have purchased the product  
14 if he had known that Walgreen had misrepresented the cost and price reduction of  
15 the product.  
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2                   **5.**

3                   **CLAIM FOR RELIEF – VIOLATION OF ORS 646.608**

4                   This is not a class action for damages at this time. Plaintiff intends to  
5 maintain this case as a class action for damages only if Walgreen fails to comply with  
6 ORCP 32 I. As alleged in this complaint, Walgreen willfully and recklessly violated  
7 ORS 646.608(1), including (j) and (s) as alleged in detail above, causing plaintiff and  
8 the putative class ascertainable losses in the difference in the price Walgreen  
9 charged for the 5-pack and the price that Walgreen falsely advertised and in the  
10 amount paid for the 5-pack because plaintiff and the class would not have purchased  
11 these products if they had known they were going to pay a higher price than was  
12 advertised. Plaintiff seeks an injunction under ORS 646.636 to stop Walgreen's  
13 ongoing unlawful trade practices. Plaintiff and the putative class are also entitled to  
14 equitable relief in the form of an accounting, and unless agreed upon by Walgreen,  
15 an order to preserve sales records and customer data that pertain to this claim under  
16 ORS 646.638. Plaintiff and the class are entitled to recover attorney fees and costs  
17 under ORS 646.638.  
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22                   **6.**

23                   **REQUEST FOR JURY TRIAL**

24                   Plaintiff respectfully requests a trial by jury.  
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2                   **7.**  
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4                   **PRAYER FOR RELIEF**  
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- 6                   **A.** An injunction prohibiting Walgreen from continuing to violate Oregon  
7 law as alleged in this complaint,  
8  
9                   **B.** Orders directing Walgreen to preserve all sales records and other  
10 customer data pertaining to this case, appointing class counsel,  
11 certifying this case as a class action, and requiring payment of plaintiff's  
12 attorney fees and costs, and any other relief the Court deems necessary.  
13

14 June 2, 2020  
15

16                   **RESPECTFULLY FILED,**  
17  
18                   /s/ Michael Fuller  
19                   **Michael Fuller, OSB No. 09357**  
20                   Lead Trial Attorney for Plaintiff  
21                   OlsenDaines  
22                   US Bancorp Tower  
23                   111 SW 5th Ave., Suite 3150  
24                   Portland, Oregon 97204  
25                   [michael@underdoglawyer.com](mailto:michael@underdoglawyer.com)  
26                   Direct 503-222-2000  
27  
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2                   **CERTIFICATE OF SERVICE**  
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4  
5                   I certify that I caused this document to be served on the following:  
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8  
9                   **Oregon Department of Justice**  
10                  **c/o Attorney General Ellen Rosenblum**  
11                  **1162 Court St. NE**  
12                  **Salem, Oregon 97301-4096**

13  
14                 June 2, 2020

15  
16                 /s/ Michael Fuller  
17                 **Michael Fuller, OSB No. 09357**  
18                 Lead Trial Attorney for Plaintiff  
19                 OlsenDaines  
20                 US Bancorp Tower  
21                 111 SW 5th Ave., Suite 3150  
22                 Portland, Oregon 97204  
23                 [michael@underdoglawyer.com](mailto:michael@underdoglawyer.com)  
24                 Direct 503-222-2000

3/5/2021 11:34 AM  
20CV19546

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2                   IN THE CIRCUIT COURT FOR THE STATE OF OREGON  
3  
4                   FOR MULTNOMAH COUNTY

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6                   **TRUEMAN DIETER**  
7                   individually and on  
8                   behalf of other customers

9                   Plaintiff

10                  vs  
11                  **WALGREEN CO.**

12                  Defendant

13                  Case No. 20CV19546

14                  **COMPLAINT FOR**  
**DAMAGES**

15                  Unlawful Trade Practices

16                  Jury Trial Requested  
Amount in Controversy: \$200  
Not Subject to Mandatory Arbitration  
Filing Fee Authority: ORS 21.160(1)(a)

17                  1.

18                  **THE PARTIES**

19                  Plaintiff files this class action on behalf of hundreds or thousands of other  
Oregon Walgreen customers who were subject to false advertising of certain Swisher  
20                  Sweets 5-pack tobacco products. Walgreen is a national retail chain with 76 stores  
21                  in Oregon and over \$100 billion in annual revenue. As alleged in this complaint,  
22                  Walgreen violated Oregon law by misleading consumers about the offering price and  
23                  cost of certain Swisher Sweets tobacco products falsely represented as "5 for the price  
24                  of 3". Walgreen also violated Oregon law by making false and misleading  
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26                  the price of 3" price reduction.

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2                   **2.**

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4 purchased for 99 cents throughout Oregon. Walgreen's "5 for the price of 3" tobacco  
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6 plaintiff and the putative class members between \$3.99 and \$4.99 for 5-packs that  
7 should have cost no more than \$2.97 as advertised, including at locations where  
8 Walgreen did not even charge a price for individual units. Walgreen knew and  
9 understood that the "price of 3" should have been no more than \$2.97, but Walgreen  
10 charged customers \$3.99 to \$4.99, a substantially greater amount.

13                   **3.**

14                   Walgreen's violation of the UTPA was willful and reckless because Walgreen  
15 was in control of and was aware of its pricing schemes. Walgreen knew that  
16 individual units of the 5-packs of tobacco products at issue were sold at a cost of 99  
17 cents throughout Oregon, or were otherwise unavailable at Walgreen. Walgreen  
18 received notice that its 5-pack tobacco advertisements potentially violated Oregon  
19 law and Walgreen continued to promote the advertisement anyway. Walgreen was  
20 intimately familiar with the UTPA because it had been actively defending a separate  
21 UTPA advertising class action in Oregon at the time of its violations in this case.  
22 Walgreen knew customers would have received a better value had they purchased  
23 the tobacco products at issue in smaller quantities. Walgreen misrepresented the  
24 cost and alleged price reduction of its 5-packs in hopes of increasing sales and profits.  
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2                  **4.**

3                  Plaintiff is an individual consumer residing in Portland, Oregon. Plaintiff paid  
4 \$3.99 for a tobacco product 5-pack represented as “5 for the price of 3” from Walgreen  
5 in Portland, Oregon in or around May 2020. Individual units of Swisher Sweets were  
6 available for purchase for 99 cents each at a nearby location, and individual units  
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8 the 5-pack was being offered at a reduced price of “5 for the price of 3” prior to  
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10 Walgreen charged plaintiff for the 5-pack and the price as advertised. Plaintiff also  
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14 if he had known that Walgreen had misrepresented the cost and price reduction of  
15 the product.  
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2                   **5.**  
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4                   **CLAIM FOR RELIEF – VIOLATION OF ORS 646.608**  
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6                   As alleged in this complaint, Walgreen willfully and recklessly violated ORS  
7                   646.608(1), including (j) and (s) as alleged in detail above, causing plaintiff and the  
8                   putative class ascertainable losses in the difference in the price Walgreen charged  
9                   for the 5-pack and the price that Walgreen falsely advertised and in the amount paid  
10                  for the 5-pack because plaintiff and the class would not have purchased these  
11                  products if they had known they were going to pay a higher price than was  
12                  advertised. Plaintiff seeks \$200 statutory damages, attorney fees and costs under  
13                  ORS 646.638, and an injunction under ORS 646.636 to stop Walgreen's ongoing  
14                  unlawful trade practices. Plaintiff and the putative class are also entitled to  
15                  equitable relief in the form of an accounting, and unless agreed upon by Walgreen,  
16                  an order to preserve sales records and customer data that pertain to this claim under  
17                  ORS 646.638.  
18

19                   **REQUEST FOR JURY TRIAL**  
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21                   Plaintiff respectfully requests a trial by jury.  
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2                   **6.**  
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4                   **PRAYER FOR RELIEF**  
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- 6                   **A.** Statutory damages, attorney fees, and costs,  
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8                   **B.** An injunction prohibiting Walgreen from continuing to violate Oregon  
9                   law as alleged in this complaint,  
10  
11                  **C.** Orders directing Walgreen to preserve all sales records and other  
12                  customer data pertaining to this case, appointing class counsel,  
13                  certifying this case as a class action, and requiring payment of plaintiff's  
14                  attorney fees and costs, and any other relief the Court deems necessary.  
15

16                  March 5, 2021  
17

18                  **RESPECTFULLY FILED,**  
19

20                  /s/ Michael Fuller  
21                  **Michael Fuller, OSB No. 09357**  
22                  Lead Trial Attorney for Plaintiff  
23                  OlsenDaines  
24                  US Bancorp Tower  
25                  111 SW 5th Ave., Suite 3150  
26                  Portland, Oregon 97204  
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COMPLAINT – Page 5 of 5